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Low Boon An & Anor v Victor Liaw Vui Lun

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HIGH COURT (KUALA LUMPUR) — CASE NO WA-23CY-32–09 OF 2024
SU TIANG JOO J
19 MARCH 2025

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Civil Procedure — Disability — Person under disability — Mental capacity of parties in civil litigation — Plaintiffs sued defendant for defamation and applied for interlocutory injunction — Defendant did not appoint lawyer and represented himself — Defendant made serious allegations of abuse of power and suspected corruption against judges which prima facie a case of contempt — Judge suspected defendant was not of sound mind after observing defendant's demeanour — Judge sought assistance of amicus curiae — Whether by analogy to s 342 of Criminal Procedure Code, court had power to have defendant detained for psychiatric observation on his state of mind to assist court to deal with matter at hand — Criminal Procedure Code s 342 — Mental Health Act 2001 ss 8(1), 10, 52, 55 & 73 — Rules of Court 2012 O 76 rr 1, 2(1), (2), (3) & O 92 r 4

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The plaintiffs had filed a defamation action against the defendant and pending the disposal of such action, the plaintiffs filed an application for interlocutory injunction ('encl 3') to restrain the defendant from publishing any defamatory statements and statements or photographs referring to the plaintiffs in the defendant's Facebook account ('the defendant's alleged Facebook account'), emails, WhatsApp, mobile phone, internet, blog, letters, press conference, television, forums/seminars and/or any other media ('the multimedia') and to remove from the multimedia the Facebook postings on the plaintiffs together with all other statements, words, references and or photographs concerning and referring to the plaintiffs. Pending the inter partes hearing of encl 3, the court had granted an inter partes order for an ad interim injunction to restrain the defendant from publishing and/or disseminating any statements, words, and/or pictures of the plaintiffs and the proceedings of the present action by whatever manner or media including the defendant's alleged Facebook account. The defendant in the present action insisted on acting in person as he had a deep distrust of lawyers. Prior to the hearing of the case, the court was informed by the plaintiff's counsel that the defendant had made serious allegations of abuse of power and suspected corruption on the part of the judges. Prima facie, it was a case of the defendant committing contempt in the face of the court. However, after observing the demeanour of the defendant, the court had reason to suspect that the defendant may not of sound mind. The court then sought assistance from the KL Bar Committee to send a counsel as an amicus curiae to observe and to assist the court with submissions on whether

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by analogy to s 342 of the Criminal Procedure Code ('the CPC'), the court had the power to have the defendant detained for psychiatric observation on his state of mind to assist the court to deal with matter at hand which were: (a) the allegation of abuse of power and suspected corruption on the part of the court and contempt of court; and (b) the application in encl 3 which had been converted to that of an inter partes hearing for an interlocutory injunction.

Held:

(1) In a civil action, like in the instant action, the CPC did not apply as it applied strictly only to criminal proceedings. In other words, recourse could not be had to the CPC in civil proceedings. Instead, the statutory framework for psychiatric evaluation in civil proceedings was governed by the Mental Health Act 2001 ('the MHA 2001') and the Rules of Court 2012 ('the ROC 2012') (see paras 17–18).

(2) Order 76 r 2(1) of the ROC 2012 provided that a person under disability may not bring, make a claim in, defend, make a counterclaim in, or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his litigation representative. Order 76 r 2(2) and r 2(3) of the ROC 2012 could be summarised to say that the proceedings required or authorised to be done by a person under disability shall or may be done by his litigation representative who has to act by a solicitor. A person under disability was defined by O 76 r 1 of the ROC 2012, to be a person who is a minor or a patient who is a mentally disturbed person within the meaning of the MHA 2001 (see paras 19–21).

(3) In determining the mental capacity of the defendant, the test provided in the cases of *Lim Thian Hock @ Lim Thiam Hock v Lim Choon Hiok* [2014] 9 MLJ 1 and *Ng Pik Lian v United Eastern Resources Sdn Bhd & Ors* [2018] MLJU 568 were applicable. In this regard, the court ought to be satisfied that the defendant had the 'ability to recognise a problem; the ability to obtain and receive, understand and retain relevant information, including advice; the ability to weigh the information (including that derived from advice) in the balance in reaching a decision; and the ability to communicate that decision' (see para 25).

(4) Section 8(1) of the MHA 2001 prohibited the admission of any person into a psychiatric hospital otherwise than in certain limited circumstances. The admission provision of an involuntary patient into a psychiatric hospital pursuant to s 10 of the MHA 2001 was upon application made in the prescribed form by a relative of the person and the recommendation in the prescribed form of a medical officer. Part X of the MHA 2001 housed the provisions under ss 55 and 73 which empowered the court to order a person to be examined but this power was circumscribed by the provisions in s 52 which provided that the court

may exercise this power upon application made before it and the application may be made by a relative of the person alleged to be mentally disordered (see paras 29–31).

(5) In the court's considered view, without an application by a relative of the defendant armed with a recommendation by a medical officer, the court did not have the power under the MHA 2001 to order the defendant to be detained in a psychiatric hospital for psychiatric observation. Be that as it may, premised upon the court's observations of the defendant's demeanour and the papers he had filed including his affidavits and his written submissions where he alluded to having a deal with his family genie/jinn/demon king which had the highest magic and power and could communicate with him, blessing him with the power of youth besides allowing his 'future second wife' to win TOTO or lottery, and assisted by the submissions of the learned amicus curiae and learned counsel for the plaintiffs, the court was of the view that the defendant may not have the mental capacity to have conduct of the legal proceedings in his defence. As such, the court, acting under the inherent jurisdiction of the court pursuant to O 92 r 4 of the ROC 2012, made the orders in para 40 of the grounds of decision, inter alia, that the defendant subject himself to be independently examined by a psychiatrist by a government-managed psychiatric facility (see paras 32 & 37–40).

[Bahasa Malaysia summary

Plaintif-plaintif telah memfailkan tindakan fitnah terhadap defendan dan sementara menunggu pelupusan tindakan tersebut, plaintif-plaintif memfailkan permohonan untuk injunksi interlokutori ('lampiran 3') untuk menghalang defendan daripada menerbitkan apa-apa kenyataan dan kenyataan fitnah atau gambar yang merujuk kepada plaintif-plaintif dalam akaun Facebook defendan ('akaun Facebook defendan yang dikatakan'), emel, WhatsApp, telefon bimbit, internet, blog, surat, sidang akhbar, televisyen, forum/seminar dan/atau mana-mana media lain ('multimedia tersebut') dan untuk mengalih keluar dari multimedia tersebut siaran Facebook berkaitan dengan plaintif-plaintif bersama-sama dengan semua kenyataan, perkataan, rujukan dan atau gambar lain berkenaan dan merujuk kepada plaintif-plaintif. Sementara menunggu perbicaraan inter partes lampiran 3, mahkamah telah memberikan perintah inter partes untuk injunksi ad interim untuk menghalang defendan daripada menerbitkan dan/atau menyebarkan apa-apa kenyataan, perkataan dan/atau gambar plaintif-plaintif dan prosiding tindakan semasa melalui apa jua cara atau media termasuk akaun Facebook defendan yang dikatakan. Defendan dalam tindakan semasa berkeras untuk mewakili dirinya sendiri kerana dia mempunyai rasa tidak percaya yang mendalam terhadap peguam. Sebelum perbicaraan kes bermula, mahkamah dimaklumkan oleh peguam plaintif-plaintif bahawa defendan telah membuat dakwaan serius salah guna kuasa dan korupsi yang disyaki di pihak

hakim-hakim. Prima facie, ia adalah kes di mana defendan telah melakukan penghinaan di hadapan mahkamah. Bagaimanapun, selepas memerhatikan tingkah laku defendan, mahkamah mempunyai sebab untuk mengesyaki bahawa defendan mungkin tidak waras. Mahkamah kemudiannya meminta bantuan daripada KL Bar Committee untuk menghantar peguam sebagai amicus curiae untuk memerhati dan membantu mahkamah dengan hujahan berkenaan sama ada dengan analogi s 342 Kanun Tatacara Jenayah ('KTJ'), mahkamah mempunyai kuasa untuk mengarahkan agar defendan ditahan untuk pemerhatian psikiatri mengenai keadaan fikirannya untuk membantu mahkamah menangani perkara-perkara di hadapan mahkamah iaitu: (a) dakwaan salah guna kuasa dan korupsi yang disyaki di pihak mahkamah dan penghinaan mahkamah; dan (b) permohonan dalam lampiran 3 yang telah ditukar kepada perbicaraan inter partes untuk injunksi interlokutori.

Diputuskan:

(1) Dalam tindakan sivil, seperti dalam tindakan semasa, KTJ tidak terpakai kerana ia hanya terpakai kepada prosiding jenayah. Dalam erti kata lain, rujukan kepada KTJ tidak boleh dibuat untuk mendapatkan jalan penyelesaian dalam prosiding sivil. Sebaliknya, rangka kerja berkanun untuk penilaian psikiatri dalam prosiding sivil dikawal oleh Akta Kesihatan Mental 2001 ('AKM 2001') dan Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') (lihat perenggan 17–18).

(2) Aturan 76 k 2(1) KKM 2012 memperuntukkan bahawa seseorang ketidakupayaan tidak boleh membawa, membuat suatu tuntutan dalam, membela, membuat suatu tuntutan balas dalam, atau mencelah dalam apa-apa prosiding, atau hadir dalam mana-mana prosiding di bawah suatu penghakiman atau notis perintah yang telah disampaikan kepadanya, kecuali oleh wakil litigasinya. Aturan 76 k 2(2) dan k 2(3) KKM 2012 boleh diringkaskan untuk mengatakan bahawa prosiding yang dikehendaki atau dibenarkan untuk dilakukan oleh seseorang ketidakupayaan hendaklah atau boleh dilakukan oleh wakil litigasinya yang perlu bertindak melalui peguam cara. Orang ketidakupayaan ditakrifkan oleh A 76 k 1 KKM 2012, sebagai orang yang belum dewasa atau pesakit yang terganggu mental mengikut pengertian AKM 2001 (lihat perenggan 19–21).

(3) Dalam menentukan keupayaan mental defendan, ujian yang dinyatakan dalam kes-kes *Lim Thian Hock @ Lim Thiam Hock v Lim Choon Hiok* [2014] 9 MLJ 1 dan *Ng Pik Lian v United Eastern Resources Sdn Bhd & Ors* [2018] MLJU 568 terpakai. Berhubung dengan perkara ini, mahkamah perlu berpuas hati bahawa defendan mempunyai 'ability to recognise a problem; the ability to obtain and receive, understand and retain relevant information, including advice; the ability to weigh the information (including that derived from advice) in the balance in

reaching a decision; and the ability to communicate that decision' (lihat perenggan 25).

(4) Seksyen 8(1) AKM 2001 melarang kemasukan mana-mana orang ke hospital psikiatri selain dalam keadaan terhad tertentu. Peruntukan kemasukan pesakit tidak sukarela ke hospital psikiatri menurut s 10 AKM 2001 adalah atas permohonan dibuat dalam borang yang ditetapkan oleh saudara orang tersebut dan atas pengemukaan syor dalam borang yang ditetapkan oleh pegawai perubatan. Bahagian X AKM 2001 menempatkan peruntukan di bawah ss 55 dan 73 yang memberi kuasa kepada mahkamah untuk memerintahkan seseorang diperiksa tetapi kuasa ini dihadkan oleh peruntukan dalam s 52 yang memperuntukkan bahawa mahkamah boleh menggunakan kuasa ini apabila permohonan dibuat di hadapannya dan permohonan tersebut boleh dibuat oleh saudara kepada orang yang didakwa mengalami gangguan mental (lihat perenggan 29–31).

(5) Pada pandangan mahkamah, tanpa permohonan oleh saudara defendan bersama denga syor oleh pegawai perubatan, mahkamah tidak mempunyai kuasa di bawah AKM 2001 untuk memerintahkan defendan ditahan di hospital psikiatri untuk pemerhatian psikiatri. Walau apa pun, berdasarkan pemerhatian mahkamah terhadap tingkah laku defendan dan kertas-kertas yang difailkannya termasuk afidavitnya dan penghujahan bertulisnya di mana dia mendakwa mempunyai perjanjian dengan jin/jinn/Raja Iblis keluarganya yang mempunyai sihir dan kuasa tertinggi dan boleh berkomunikasi dengannya, memberkatinya dengan kuasa keremajaan dan juga membenarkan 'bakal isteri keduanya' untuk memenangi TOTO atau loteri, dan dibantu dengan hujahan daripada amicus curiae dan peguam terpelajar bagi plaintif-plaintif, mahkamah berpendapat bahawa defendan mungkin tidak mempunyai keupayaan mental untuk menjalankan prosiding undang-undang dalam pembelaannya. Oleh yang demikian, mahkamah, yang bertindak di bawah bidang kuasa sedia ada mahkamah menurut A 92 k 4 KKM 2012, membuat perintah-perintah seperti yang dinyatakan dalam perenggan 40 alasan penghakiman, antara lain, bahawa defendan membawa dirinya untuk diperiksa secara bebas oleh pakar psikiatri di dalam kemudahan psikiatri yang diuruskan oleh kerajaan (lihat perenggan 32 & 37–40).]

Cases referred to

Goddard Elliott (a firm) v Fritsch [2012] VSC 87, SC (folld)

L v Human Rights and Equal Opportunity Commission (2006) 91 ALD 258, FC (refd)

Lim Thian Hock @ Lim Thiam Hock v Lim Choon Hiok [2014] 9 MLJ 1; [2014] 10 CLJ 484, HC (folld)

Ng Pik Lian v United Eastern Resources Sdn Bhd & Ors [2018] MLJU 568; [2018] CLJU 1426, HC (folld)

A *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] 2 MLJ 652; [2021] 3 CLJ 603, FC (refd)
Magavalis, Re [1983] 1 Qd 59, SC (refd)

Legislation referred to

B Criminal Procedure Code s 342, 342(1)
Interpretation Acts 1948 and 1967 s 3
Mental Health Act 2001 ss 8(1), 10, 52, 55, 73, Part X
Rules of Court 2012 O 76 r 1, O 76 r 2(1), 2(2), 2(3), O 92 r 4

C *Lai Kok Wing (with Bryan Soon Ten Sheng) (Justin Voon Chooi & Wing) for the plaintiff.*
Victor Liaw Vui Lun for the defendant.
Alvin Oh Seong Yew (the former chairman of the Kuala Lumpur Bar Committee at the invitation of the court) (with Thoo Zi Hui) as amicus curiae.

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Su Tiang Joo J:

INTRODUCTION

E **[1]** In their suit against the defendant, a Malaysian citizen, grounded on defamation, the first plaintiff who is the chairman and managing director as well as the majority shareholder of the second plaintiff, Ancubic Holdings Sdn Bhd, a developer company, in gist applied ex parte (encl 3) for the following reliefs:

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(a) that pending the disposal of the action, an order be granted for an interlocutory injunction to restrain the defendant whether by himself, his agents, nominees, employees and or representatives from publishing any statements or photographs referring to the plaintiffs by whatever name including 'Dato' Low Boon An', 'Dato' Low', 'Ancubic' and names of the development project of the plaintiffs via his Facebook account https://www.Facebook.com/share/XMCCn224FcAJF7eD/?mibextid=LQQJ4d ('defendant's alleged Facebook account'), emails, WhatsApp, mobile phone, internet, blog, letters, press conference, television, forums/seminars and or any other media ('multimedia') to any other parties in writing or otherwise;

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(b) that pending the disposal of the action, an order be granted for an interlocutory injunction against the defendant from publishing defamatory statements about the plaintiffs, as pleaded in their statement of claim, via the multimedia;

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(c) that pending the disposal of the action, an order be granted for an injunction against the defendant that within five days from the date of the order, he withdraws, removes or deletes from the multimedia, the

Facebook postings on the plaintiffs together with all other statements, words, references and or photographs concerning and referring to the plaintiffs;

(d) that pending the disposal of the application for the aforesaid prayers an ex parte order be granted for an ad interim injunction in terms of prayers (a) and (b) above;

(e) that costs of the application be paid by the defendants to the plaintiffs; and

(f) such further or other reliefs be granted to the plaintiffs as this honourable court may deem fit and just.

[2] The defendant insisted on acting in person as he has a deep distrust of lawyers.

[3] This action was originally under the management of KL High Court NCvC 4 presided by His Lordship, Justice Akhtar Tahir. On 4 October 2024, His Lordship Justice Akhtar Tahir granted an ex parte order in terms of prayers (a), (b) and (c) of encl 3 above with the inter partes hearing of encl 3 scheduled for 18 October 2024. Following aspersions cast upon His Lordship Justice Akhtar Tahir, His Lordship directed on 29 November 2024 that this action to be transferred to another court and the action was transferred to KL High Court NCvC 3 presided by me.

[4] On 5 December 2024, I had granted an inter partes order for an ad interim injunction to restrain the defendant until the inter partes hearing of encl 3 on 22 January 2025 or further order, that save for the lodging of any police reports, the defendant is restrained from publishing and/or disseminating any statements, words, and/or pictures of the plaintiffs and the proceedings of this action by whatever manner or media including the defendant's alleged Facebook account.

[5] Prior to the hearing on 22 January 2025 I was alerted by learned counsel for the plaintiffs that serious allegations of abuse of power and suspected corruption on the part of the judges were being cast by the defendant. This struck at the core of the administration of justice. Prima facie, it is a case of the defendant committing contempt in the face of the court. More so, with the defendant asserting he is very smart with he being a Mensa member since the age of nine years of age, and thus the logical inference to be drawn is that he was and is fully aware of what he is doing.

[6] Although, the application was to be heard in chambers, proceedings on both 5 December 2024 and 22 January 2025 were conducted in open court so

that a recording of the proceedings can be made in aid of transparency.

[7] However, from my observation of the demeanour of the defendant, I have reason to suspect that the defendant may not be of sound mind. I had sought assistance from the KL Bar Committee to send a counsel as an amicus curiae on 22 January 2025 to observe and to assist the court with submissions on whether by analogy to s 342 of the Criminal Procedure Code, this court has the power to have the defendant detained for psychiatric observation on his state of mind to assist the court to deal with matter at hand which are:

(a) the allegation of abuse of power and suspected corruption on the part of the court and contempt of court; and

(b) the application in encl 3 which has been converted to that of an inter partes hearing for an interlocutory injunction.

BRIEF CHRONOLOGY

[8] To facilitate comprehension of the matter at hand, a brief chronology of the material events that have taken place in this action is set out below:

(a) 25 September 2024 — the plaintiffs filed a writ (encl 1) together with a statement of claim (encl 2) against the defendant premised upon defamation seeking general damages as well as aggravated and/or exemplary damages for humiliation, embarrassment, harassment, nuisance, intimidation and unlawful interference of trade, with interest thereon at 5%pa from 25 September 2024 until full settlement, costs and such further or other relief as this honourable court may deem fit and just;

(b) 25 September 2024 — an ex parte notice of application (encl 3) together with an affidavit in support affirmed by the first plaintiff ('P1') and a certificate of urgency (encl 5) were filed for the reliefs mentioned in the introduction above;

(c) 4 October 2024 — counsel for the plaintiffs appeared before His Lordship Justice Akhtar Tahir of KLHC NCvC 4 who granted an ex parte order in terms of prayers (a), (b) and (c) of encl 3 with the hearing of encl 3 to be heard inter partes on 18 October 2024;

(d) 18 October 2024 — counsel for the plaintiffs and the defendant himself appeared. Directions were given by His Lordship Justice Akhtar Tahir for the defendant to file his affidavit-in-reply and defence by 1 November 2024, the plaintiffs to file their affidavit-in-reply and reply to defence by 25 November 2024 with submissions for encl 3 to be filed three days before the date of hearing scheduled for 29 November 2024;

(e) 29 November 2024 — counsel for the plaintiffs and the defendant

himself appeared. His Lordship Justice Akhtar Tahir observed that from a perusal of the affidavits, the defendant has cast aspersions about the validity of the Datoship conferred upon His Lordship as well allegations of corruption against His Lordship. On the premise that so as not to prejudice any parties, His Lordship recused himself and directed that the action be transferred to another court;

(f) 5 December 2024 — matter came before me. Counsel for the plaintiffs and the defendant himself appeared. Counsel for plaintiffs objected to the late filing of the defendant's affidavit (encl 28) and highlighted the serious aspersions cast by the defendant against His Lordship Justice Akhtar Tahir. Upon being asked whether it would be better for him to be represented by a lawyer, the defendant adamantly refused. He said that what he had said about the plaintiffs and His Lordship Justice Akhtar Tahir is a repeat of what is set out in the media and to his mind, there is no law to prevent him from repeating what is already in the media. I had informed him that under the law, if a party repeats what is said, it is a republication under the law of defamation. Nevertheless, as the defendant is a layman who may not be familiar with procedural requirements, I allowed the defendant to place reliance on his affidavit filed on 4 December 2024 (encl 28) with the plaintiffs given time to file an affidavit-in-reply by 19 December 2024. Any earlier purported affidavits not affirmed before a commissioner for oaths were to be disregarded. Enclosure 3 was rescheduled to be heard on 22 January 2025 with an ad interim order granted restraining the defendant until the hearing of encl 3 on 22 January 2025 or further order, that save for the lodging of any police reports, the defendant is restrained from publishing and or disseminating any statements, words, and or pictures of the plaintiffs and the proceedings of this action in whatever manner or media including the defendant's alleged Facebook account; and

(g) 22 January 2025 — counsel for the plaintiffs highlighted that the defendant has filed an affidavit (encl 34) wherein he had alleged that both the courts ie NCvC 4 and NCvC 3 have not been fair to him, and when the court decides arbitrarily he will be a victim of persecution with the court being biased in favour of the plaintiffs (encl 34, pp 19 and 53). He also alleged that in granting the ad interim order of 5 December 2024,1 had abused my power and is suspected of being corrupt (encl 34, p 14) in granting such an order. The court directed that from the defendant's allegations, from the papers filed by the defendant, and from his demeanour, the court has reason to suspect that the defendant may not be of sound mind. Submissions are to be tendered on whether the court can by way of analogy to s 342 of the Criminal Procedure Code have the defendant detained for observation in a psychiatric hospital on the state of mind of the defendant.

A DIRECTIONS GIVEN ON 22 JANUARY 2025

[9] The defendant took issue with the court having directed learned counsel for the plaintiffs to put up a draft of the ad interim reliefs he sought pending the resolution of the allegations and aspersions cast against the court. This draft B was directed as the prayers contained in encl 3 sought very wide reliefs.

[10] A copy of the draft of the reliefs sought on 22 January 2025 was shown to the defendant for his comments. He had expressed his disagreement for such ad interim relief to be given but exercising my discretion, I granted the ad C interim relief sought for the following reasons:

(a) the materials placed before the court by the defendant are prolix and gibberish;

D (b) the defendant's only sensible oral articulation as to why he made all the allegations against the plaintiffs is because he is repeating what he saw in the media and that to his mind mere repetition is not unlawful; and

(c) taking into account that the defendant asserted that he would like to E lodge police reports for his own safety, I had expressly ordered that he should not be restrained from so doing.

[11] However, the allegations and aspersioins of lack of integrity, abuse of power and corruption whether suspected or otherwise cast against the court, F first against His Lordship Justice Akhtar Tahir and now against me should not be ignored. These allegations strike at the core of the administration of justice. They are contemptuous and amount to contempt of court. See *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] 2 MLJ 652; [2021] 3 CLJ 603 (FC) at para 125 where it was held that statements giving rise to the G implication that the court is corrupt amounts to contempt of court as it would have the effect of undermining or eroding public confidence in the administration of justice.

[12] In the face of such an onslaught against the integrity and independence H of the judiciary and the administration of justice, I am of the considered view I ought not to recuse myself and have the action transferred to yet another court with there being a real likelihood that such aspersions will again be raised should any ruling or order be made which may not be to the liking of the defendant irrespective of the merits of the case. Nor would justice be served by I prolonging this action.

[13] However, from my observations of the defendant both on 5 December 2024 and 22 January 2025, and the materials in the form of his affidavits and written submissions filed, in my considered view, his actions give rise to a

reasonable suspicion that the defendant may not be of sound mind. Although he has raised protestations as to how high his intellect is, with him highlighting that he is a member of Mensa, these would only serve to aggravate the contempt of court that was committed which ought to be taken into consideration when dealing with the act of contempt in the face of the court, as well as in the hearing of encl 3.

[14] Wherefore, I had directed for submissions to be filed by all the parties including learned amicus curiae, Mr Alvin Oh Seong Yew who was then the chairman of the KL Bar Committee, on whether by analogy to s 342 of the Criminal Procedure Code ('the CPC') the court can have the defendant detained for psychiatric evaluation.

[15] Section 342(1) of the CPC provides as follows:

> (1) When a Judge or a Magistrate holding a trial has reason to suspect that the accused person is of unsound mind and consequently incapable of making his defence, he shall in the first instance investigate the fact of such unsoundness.

THE COURT'S POWERS IN CIVIL PROCEEDINGS

[16] Written submissions were presented by the learned amicus curiae (encl 45) and learned counsel for the plaintiffs (encl 42) as well as the defendant (encl 47). Upon reading their written submissions, I am of the following considered view.

[17] In a civil action, like in the instant action, the CPC does not apply as it applies strictly only to criminal proceedings. In other words, recourse cannot be had to the CPC in civil proceedings.

[18] Instead, the statutory framework for psychiatric evaluation in civil proceedings is governed by the Mental Health Act 2001 ('the MHA 2001') and the Rules of Court 2012 ('the ROC 2012').

[19] It is provided by O 76 r 2(1) of the ROC 2012 that a person under disability may not bring, make a claim in, defend, make a counterclaim in, or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his litigation representative.

[20] Order 76 r 2(2) and r 2(3) of the ROC 2012 can be summarised to say that the proceedings required or authorised to be done by a person under disability shall or may be done by his litigation representative who has to act by a solicitor.

[21] A person under disability is defined by O 76 r 1 of the ROC 2012, to be a person who is a minor or a patient who is a mentally disturbed person within the meaning of the Mental Health Act 2001.

[22] The defendant is not a minor as he has attained the age of majority, see s 3 of the Interpretation Acts 1948 and 1967 (Consolidated and Revised 1989) Act 388.

[23] On the question of whether he is a patient or a mentally disturbed person within the meaning of the Mental Health Act 2001, I find the decision of Her Ladyship SM Komathy Suppiah JC (later JCA) in *Lim Thian Hock @ Lim Thiam Hock v Lim Choon Hiok* [2014] 9 MLJ 1; [2014] 10 CLJ 484 (HC), a decision cited by learned amicus curiae and which is adopted by Her Ladyship Wong Chee Lin JC (later J) in *Ng Pik Lian v United Eastern Resources Sdn Bhd & Ors* [2018] MLJU 568; [2018] CLJU 1426 at para 37 and cited by learned counsel for the plaintiffs, to be helpful and which I gratefully adopt and set out hereunder.

[24] In *Lim Thian Hock* at paras 34 and 48 the following summary appears and which bears repeating:

> [34] The test formulated in *Masterman-Lister*, can be applied to determine if the plaintiff is a patient within the meaning of O 76 as it is pari materia with the English provision. Applying the test, in order to determine whether a person has capacity to litigate, the court has to be satisfied that the person has the requisite mental abilities:
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> (a) the ability to recognise a problem;
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> (b) the ability to obtain and receive, understand and retain relevant information, including advice;
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> (c) the ability to weigh the information (including that derived from advice) in the balance in reaching a decision; and
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> (d) the ability to communicate that decision.
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> [48] In *Masterman-Lister*, there is this valuable statement on why it is essential that the court must ensure that a litigant has the mental capacity to institute and conduct legal proceedings. Chadwick LJ explained in para 65 as follows:
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> > The pursuit and defence of legal proceedings are juristic acts which can only be done by persons having the necessary mental capacity; and the court is concerned not only to protect its own process but to provide protection to both parties to litigation which comes before it. A defendant is entitled to expect that he will not be required to defend proceedings brought against him by a person of unsound mind acting without a next friend. Order 80, r 2(2) was facilitative: it provided that anything which in the ordinary conduct of the proceedings is required or authorised to be done by a party to proceedings shall or may, if the party is a person under a disability, be done by his next friend or guardian ad litem.

[25] Whilst the above tests was said in determining the mental capacity of the plaintiff in both *Lim Thian Hock* and *Ng Pik Lian*, it is undoubted that they would apply equally to a defendant and the court ought to be satisfied that the defendant has the 'ability to recognise a problem; the ability to obtain and receive, understand and retain relevant information, including advice; the ability to weigh the information (including that derived from advice) in the balance in reaching a decision; and the ability to communicate that decision'.

[26] I accept the helpful submissions of the learned amicus curiae that when the issue of a litigant's mental capacity is of concern, the court has a duty to examine that issue at the earliest opportunity with reliance placed on the Australian case of *Goddard Elliott (a firm) v Fritsch* [2012] VSC 87 where Justice Bell of the Victoria Supreme Court considered various authorities and held at para 563 that:

> When the issue is properly raised, it is the duty of the court at the earliest opportunity to examine whether the person has the mental capacity which is required. The principle is of long standing and was applied in the nineteenth century in *Howell v Lewis* (1891) 61 LJ Ch 89. Faced with conflicting evidence about the state of mind of a party, Kekewich J (a judge of considerable authority) proceeded in this manner:
>
> > I have some evidence of weakness of intellect which I cannot disregard, and that evidence includes medical evidence; and I think I should be doing wrong if I were to say that the presumption which I have mentioned should prevail. I think I must regard it as if there were a dispute, and I think that that dispute must be decisively settled before we can get on any further.
>
> The same course was adopted in *Allregal Enterprises Pty Ltd v Carpaolo Nominees Pty Ltd* [2009] WASCA 33. Faced with an unrepresented person who appeared to be mentally ill, Pullin JA referred her to the Public Advocate for a capacity assessment and report. His Honour stated (or understated) this to be the applicable principle:
>
> > [I]f the court is put on notice by evidence that a person may not have the capacity to manage his or her own affairs, then in my opinion, the court is duty bound to decide whether the person does have capacity. To proceed without determining the issue means that the court is participating in what may be irregular proceedings.

[27] In *Goddard*, the Supreme Court of Australia highlighted the danger of proceeding without ascertaining the mental capacity of the party with suspected mental capacity in the following words, which I find persuasive:

> Procedural implications
>
> [566] The responsibility of the court to determine whether a party has the requisite mental capacity can have important consequences for the conduct of legal proceedings by the court. The position of a person compelled to participate in a hearing when mentally ill may be seen to be analogous with someone compelled to

attend a hearing who cannot for reasons of legitimate physical illness or other reasonable explanation. A person who is physically ill or otherwise (reasonably) cannot attend the hearing has a strong claim to an adjournment. So also a person who is mentally ill but able to be physically present has a strong claim to an adjournment. As was held by Handley JA in *Murphy v Doman* in both cases there is serious risk that the continuation of the proceeding by the court would be denial of natural justice.

[567] In consequence, when it is shown that there is sufficient concern about the capacity of a party to participate in legal proceedings, the court may need to adjourn the proceeding in order to examine the question. Where necessary, the court must consider these issues on its own motion ... in this common sense manner.

[28] With the defendant asserting in his written submissions that he is a genius (encl 47), among those with one of the highest IQ in Malaysia, him having a baptism/stepfather (encl 47 pp 84 and 100) who can make him look ten to 12 years younger, letting his future second wife win a lottery in TOTO and levying other 'magical' and diabolical punishments (encl 34 pp 42–43 and encl 47 p 81) and with him having made a pact with a genie (encl 34 pp 85–86 and encl 47 pp 84 and 100) but yet asserting he is of sound mind and/or a genius, it would be opportune to determine whether from the court's objective observations of the defendant, the court has the power to order the defendant to be detained for observation under the MHA 2001 and if not, whether it has the inherent powers to do so under O 92 r 4 of the ROC 2012.

[29] A study of the MHA 2001 reveals that the provisions on the admission of any person into a psychiatric hospital is restrictive. Section 8(1) of the MHA 2001 *prohibits the admission* of any person into a psychiatric hospital otherwise than in certain limited circumstances as follows:

(1) Except as may be otherwise expressly provided in any other written law, no person shall be admitted into a psychiatric hospital otherwise than —

(a) upon the order of a medical officer or registered medical practitioner under section 14;

(b) as a voluntary patient;

(c) upon the order of a medical officer or registered medical practitioner under subsection 9(5) or 14(1) or 14(3);

(d) *in accordance with section 10*;

(e) *by an order of Court under section 55 or 73*;

(f) upon the order of the Court or the Public Prosecutor under section 342 of the Criminal Procedure Code [Act 593] or the Yang di-Pertuan Agong or the Ruler or Yang di-Pertua Negeri of a State under section 344 or 348 of the Criminal Procedure Code, or by the order of the relevant authority under corresponding provisions in any other written law; or

(g) on a transfer from another psychiatric hospital, or on return from leave, or on a reapprehension after being absent without leave. A

(2) Nothing in this Act shall prohibit any voluntary patient from receiving care, treatment or rehabilitation in any other government hospital, or in any private hospital licensed under the Private Healthcare Facilities and Services Act 1998. B

[30] The admission provision of an involuntary patient into a psychiatric hospital pursuant to s 10 of the MHA 2001 is upon application made in the prescribed form by a relative of the person and the recommendation in the prescribed form of a medical officer. C

[31] Part X of the MHA 2001 houses the provisions under ss 55 and 73 which empowers the court to order a person to be examined but this power is circumscribed by the provisions in s 52 which provides that the court may exercise this power upon application made before it and the application may be made by a relative of the person alleged to be mentally disordered. D

[32] As there is no such application before this court, contrary to the submission by learned counsel for the plaintiffs, I find that the provisions under s 8(1) read together with ss 55 and 73 of the MHA 2001 do not empower this court to order a person suspected to be mentally disordered to be admitted into a psychiatric hospital on its own motion. E

[33] As pointed out by learned amicus curiae, Mr Alvin Oh, in *Lim Thian Hock*, Her Ladyship Justice SM Komathy ordered the plaintiff to appoint a litigation representative after analysing the medical evidence placed before her on the plaintiff's mental condition after having found that the plaintiff lacked the mental capacity to conduct proceedings. In the instant case, there is no medical evidence save for the court's observations of the defendant's conduct and assertions narrated above which raises concern about his mental capacity to participate in the instant legal proceedings. F G

[34] In *L v Human Rights and Equal Opportunity Commission* (2006) 91 ALD 258, the Federal Court of Australia held that: H

> Cases such as *Hutchinson v Gaitazis* (1980) 25 SASR 30*; AJI Services Pty Ltd v Manufacturers' Mutual Insurance Ltd* [2005] NSWSC 709; and *Levey v Levey* (1979) 11 BCLR 97 (SC) were decided on medical evidence. *There will, however, be cases where no medical evidence is available as for, example when a litigant refuses to submit to medical examination. And there will be cases where the lack of capacity is so clear that medical evidence is not called for.* In those instances, and perhaps others, the court is entitled to rely on its own observation to make an assessment about the capacity of a party: see, for example *Murphy v Doman* at [37] (Handley JA); *AJI Services Pty Ltd v Manufacturers' Mutual Insurance Ltd* at [57] (Bell J). I

[35] *Goddard Elliot* (at para 565) supports the above position where the Supreme Court of Australia held that in most cases the court will base its decision on medical evidence but it may base its decision on other evidence, including its own assessment of the issue and any pertinent observations of the person by the trial judge. The Supreme Court observed that there is no duty psychiatrist stationed at every court just in case they are needed and added that in Australia, the supreme courts of the states have the inherent jurisdiction to order that the person be independently examined for mental capacity by a doctor reporting directly to the court. See also *Re Magavalis* [1983] 1 Qd 59 where Justice McPherson decided the Australian courts have such an inherent jurisdiction. Just as in Australia, so too in Malaysia, there is no duty psychiatrist stationed at every court just in case they are needed.

[36] With that, I turn to O 92 r 4 of the ROC 2012 which is reproduced below. Learned counsel for the plaintiffs submitted that I invoke the inherent powers of the court to have the defendant admitted for observation pursuant to such provisions:

> Inherent powers of the Court (O 92 r 4)
>
> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[37] Premised upon my observations of the defendant's demeanour and the papers he has filed including his affidavits and his written submissions (encl 47 pp 80–81) where he alluded to having a deal with his family genie/jinn/demon king which has the highest magic and power and can communicate with him, blessing him with the power of youth besides allowing his 'future second wife' to win TOTO or lottery (encl 47 p 48), and assisted by the submissions of the learned amicus curiae and learned counsel for the plaintiffs, I make the following findings.

FINDINGS AND CONCLUSION

[38] In my considered view, without an application by a relative of the defendant armed with a recommendation by a medical officer, this court does not have the power under the MHA 2001 to order the defendant to be detained in a psychiatric hospital for psychiatric observation.

[39] Be that as it may, premised upon this court's observations and narrated above, this court is of the view that the defendant may not have the mental capacity to have conduct of the legal proceedings in his defence.

[40] Wherefore, acting under the inherent powers of the court pursuant to

O 92 r 4 of the ROC 2012 to avoid any breach of natural justice to the detriment of the defendant, I order that:

(a) the defendant subject himself to be independently examined by a psychiatrist by a government managed psychiatric facility within one month from the date of this order and that the respective psychiatrist is to assess and to render a report directly to this court on the mental state of the defendant on whether he has the mental capacity to have conduct of the legal proceedings on his own behalf, failing which, this court shall consider making its own assessment;

(b) in the interim, the further proceedings on the prima facie act of contempt of court by the defendant and the hearing of encl 3 inter partes shall be adjourned to a date after the report of the psychiatrist examination of the defendant is made available to the court;

(c) subject to the views expressed by this court, an ad interim order for injunction on terms as granted on 22 January 2025 shall continue until further order with costs in the cause;

(d) the parties shall be at liberty to apply; and

(e) to 5 May 2025 for hearing of encl 3 for the court to review the report of the medical practitioner, if any, failing which for the court to make its own assessment and to make such order as may be necessary.

[41] The court records its appreciation to learned counsel, in particular, the learned amicus curiae, Mr Alvin Oh Seong Yew, for his comprehensive submissions on the court's power in dealing with the situation that presented itself in the instant case and which has greatly assisted the court in dealing with the matters at hand.

Order accordingly.

Reported by Dzulqarnain Ab Fatar